

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

3:08cv219  
(3:04cr223)

MADISON DUANE MCRAE, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA )  
 )  
Respondent. )  
\_\_\_\_\_ )

ORDER and NOTICE

**THIS MATTER** is before this Court upon Respondent's Motion for Summary Judgment.  
(Doc. No. 19).

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises  
Petitioner, who is proceeding pro se, of the heavy burden that he carries in responding to  
Respondent's Motion for Summary Judgment.

Rule 56(e)(2), Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is properly made and supported, an  
opposing party may not rely merely on allegations or denials in its own pleadings;  
rather, its response must -- by affidavits or as otherwise provided in this rule -- set  
out specific facts showing a genuine issue for trial. If the opposing party does not  
so respond, summary judgment should, if appropriate, be entered against that party.

This language means that if the Petitioner has any evidence to offer to show that there is a genuine  
issue for trial, he must now present it to this Court in a form which would otherwise be admissible  
at trial, that is, in the form of affidavits or unsworn declarations. An affidavit is a written  
statement sworn before a notary public. An unsworn statement, made and signed under the

penalty of perjury, may also be submitted. Affidavits or sworn statements must be presented by Petitioner to this Court within thirty (30) days of the entry of this Order. As stated by Rule 56(e)(2), Petitioner's failure to respond may result in granting summary judgment to Respondent, that is, the dismissal of the Motion to Vacate with prejudice.

**IT IS, THEREFORE, ORDERED** that Petitioner has thirty (30) days from the entry of this Order to file his response, including any evidence, to Respondent's Motion for Summary Judgment.

The Clerk is directed to send copies of this Order and Notice to the parties.

Signed: December 15, 2008

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

